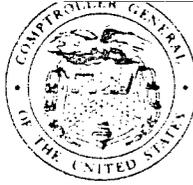


DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

60654

FILE: B-184845

DATE: March 18, 1976

MATTER OF: Contract Support Company

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Dup**DIGEST:**

1. Irreconcilable conflict between agency's and protester's versions of preclosing date events concerning alleged improprieties in drafting specifications and conducting solicitation under negotiated procurement must be resolved by acceptance of administrative version of events in absence of probative evidence (other than statements from each side) regarding events in question.
2. Determination as to whether proposal is within competitive range is matter of administrative discretion and will not be questioned unless without reasonable basis.
3. No discussions with offeror of unacceptable proposal were required prior to determining that proposal was not within competitive range.
4. Protest against alleged restrictive nature of specifications after proposal was rejected as unacceptable is untimely under section 20.2(b)(1) of Bid Protest Procedures, providing for filing based upon alleged improprieties in solicitation prior to closing date for receipt of initial proposals.

Request for proposals (RFP) No. 2-25641 (DRM), covering a requirement for data analysis services at the Ames Research Center (Ames) of the National Aeronautics and Space Administration (NASA) was issued on April 24, 1975. The record indicates that proposals were received from 10 firms by June 30, 1975, the closing date for receipt of initial proposals as provided in amendment No. 3 to the RFP. Contract Support Company, one of the offerors, protests the rejection of its proposal as unacceptable with no reasonable chance of being selected for award, the failure of NASA to discuss the RFP with it prior to determining that its proposal was unacceptable, and the consequent failure of the contracting activity to include it in negotiations for the procurement. Award has been withheld by NASA pending resolution of the protest.

Contract Support Company has made many allegations in support of the protest. However, the main contention is best summarized by Mr. W. J. Massey, Sr., the owner of Contract Support Company, in the telegram protest received in our Office on August 29, 1975, in which he stated:

"I wish to protest possible irregularities in the activities related to this solicitation. I have information to the extent that the specifications were rigged by the Ames staff and assisted by and in consultation [sic] with the incumbent staff in order to eliminate all other qualified personnel. * * *"

Elaborating upon this statement, Mr. Massey contends that the staff at Ames wrote the specifications and conducted the solicitation in a manner designed to insure that only the staff of the incumbent contractor would meet the experience requirements of the RFP. As a specific example, Contract Support Company alleges that the specifications require the contract supervisor to have a background in architecture. The present contract project manager has such a background, and Contract Support Company cites that as evidence of an attempt to restrict competition so that only the incumbent staff could qualify.

Contract Support Company also protests the fact that it had requested, but was not allowed, a meeting with Ames officials for the purpose of discussion and clarification of the requirements. This request, contained in Contract Support Company's proposal transmittal letter of June 30, 1975, asked that such clarification be made during negotiations prior to award of the contract.

NASA has denied the allegations made by Contract Support Company and contends that the Contract Support Company offer was found to be technically unacceptable by Ames' technical review committee in accordance with the RFP evaluation criteria which indicated that award would depend primarily upon evaluation of the technical proposal submitted. Consequently, NASA is of the view that further negotiations with Contract Support Company were not required since its proposal was not considered to be in the competitive range.

For the reasons stated below the protest is denied.

NASA Procurement Regulation § 3.805-1(a) (1975 ed.) requires that after evaluation of proposals, written or oral discussions shall be had with all responsible offerors who submit proposals within a competitive range, price and "other factors" considered. The term "other factors" has been held to include the technical acceptability of proposals. See Economic Development Corporation, B-184017, September 16, 1975, 75-2 CPD 152. Competitive range determinations necessarily require the exercise of a considerable degree of discretion by procurement officials given the complexity of requirements usually acquired in negotiated procurements. Consequently, our Office will not question competitive range determinations unless they are without a reasonable basis. See Phelps Protection Systems, Inc., B-181148, November 7, 1974, 74-2 CPD 244.

In this case, the technical review committee consisted of six persons representing four different branches within the Space Science Division at Ames. Using the evaluation factors set forth in the RFP, the proposals were evaluated by the review committee and divided into three groups based upon the technical score given to each proposal. The groupings were: acceptable, potentially acceptable, and unacceptable. Offerors whose proposals were considered potentially acceptable were invited to give oral presentations of their technical proposals which were then reevaluated by the committee. Through this process, four proposals were eventually rated as acceptable and were considered to be in the competitive range. Contract Support Company's proposal was determined to be unacceptable because of a number of deficiencies. NASA had indicated in the November 26, 1975, report that, if Contract Support Company made a request, it would debrief the company after the selection of the successful contractor and before award of the contract. In that regard, NASA is not required to negotiate with any offeror whose proposal is determined not to be in the competitive range. See Economic Development Corporation, supra. Furthermore, no discussions with the Contract Support Company were required by Ames prior to determining that the proposal was not within the competitive range. See Daconics, B-182309, May 19, 1975, 75-1 CPD 300. Since the Contract Support Company has not been debriefed by NASA as to the reasons its proposal was determined to be unacceptable, our Office is making no decision at this time as to the reasonableness of the determination as to the unacceptability of the proposal.

Protester alleges that the personnel at Ames unfairly structured the RFP and evaluated the proposals submitted so as to insure that incumbent contractor personnel would have to be hired in order for an offeror to be awarded the contract. NASA has specifically denied each impropriety alleged by the Contract Support Company. The protester has provided no evidence of improper conduct by Ames personnel, and all statements which the Contract Support Company has attributed to various personnel on the Ames staff in support of its allegations of a conspiracy to conduct the solicitation in a manner prejudicial to the Contract Support Company have been denied by the individuals to whom the statements were attributed. Where there is an irreconcilable conflict between the agency's and the protester's versions of events occurring during the solicitation, in the absence of probative evidence (other than statements from each side), we must accept the administrative version of events. Phelps Protection Systems, Inc., supra.

Moreover, after a careful review of the NASA report in response to Contract Support Company's protest, we are satisfied that the solicitation in question was fairly and impartially conducted by Ames. With regard to the allegation that the specifications were drafted in order to restrict competition and rig the RFP so that only incumbent contractor staff could qualify, we have seen no evidence that there was any influence exerted by the staff members upon the NASA Technical Officer to develop the specifications in favor of the incumbent staff. This allegation was specifically denied by the NASA Technical Officer and the incumbent staff member who allegedly assisted him in so drafting the specifications. We note also that protester's interpretation of the specifications, specifically, that the specifications required the contract supervisor to have a background in architecture because the current contractor's project manager had such a background, is erroneous since architecture is merely stated, not required, as one of the alternate physical science backgrounds which would be acceptable for the position. Furthermore, section 20.2(b)(1) of our Bid Protest Procedures (40 Fed. Reg. 17979 (1975)) provides that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals shall be filed prior to such date. Since Contract Support Company did not protest the alleged restrictive nature of the specifications prior to the closing date for receipt of proposals, this aspect of the protest is untimely and not for consideration on the merits. See Adams Associated, B-182469, January 6, 1975, 75-1 CPD 8; and Daconics, supra.

B-184845

On the basis of the foregoing, the protest is denied.


Deputy Comptroller General
of the United States